

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 224 of 2019

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Bibhuti Bhusan Sahoo, aged about 57 years, S/o Kanhu Charan Sahoo, resident of Plot No.1257/5700 Mallick Complex, lane II Jagamara, PO/PS-Khandagiri, Bhubaneswar, Dist.-Khurda, Odisha, presently working as Scientist D (Sr. Chemist), Central Ground Water Board under Ministry of Water Resources, Bhujal Bhawan, Khandagiri, Bhubaneswar, Dist.-Khurda.

.....Applicant

VERSUS

1. Union of India represented through its Secretary to government of India, Ministry of Water Resources Shrama Shakti Bhawan, Rafi Marg, New Delhi, Pin -110001.
2. The Chairman, Central Water Ground Water Board, Ministry of Water Resources River Development and Ganga Rejuvenation, Central Head Quarters, Bhujal Bhavan, NH-IV, Faridabad, PIN-121001.
3. Regional Director, Central Ground Water Board under Ministry of Water Resources, Bhujal Bhavan, Khandagiri, Bhubaneswar, Dist.-Khurda, Odisha, PIN-751030.

.....Respondents

For the applicant : Mr.S.B.Jena, counsel

For the respondents: Mr.R.K.Kanungo, counsel

Heard & reserved on : 3.3.2020

Order on :13.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the present OA seeking the following relief :

- “(i) To admit the OA;
- (ii) To quash the order of transfer dated 07.02.2019 under Annexure A/3 and the order dated 13.03.2019 under Annexure A/7 rejecting his representation;
- (iii) To pass any other order/orders as deemed fit and proper in the circumstances of the case.
- (iv) Allow this OA with cost.”

2. The applicant, while working as Scientist D under the respondent under respondent no.2 (referred hereinafter as CGWB) in Bhubaneswar Region since 5.1.2009, has been transferred to Jammu vide the transfer order dated 7.2.2019 (Annexure-A/3). On 10.1.2018, he had submitted his option for transfer to Raipur, Kolkata and Guwahati and the said option was forwarded to

the respondent no. 2 vide letter dated 7.2.2018 (Annexure-A/2). Since his option was not considered, he filed a representation dated 13.2.2019 (Annexure-A/4) informing about his difficulties due to transfer and filed OA No. 139/19 when no action was taken on the said representation. The OA No. 139/19 was disposed of at admission stage with direction to the respondents to dispose of the said representation. The respondent no. 2, thereafter, passed the order dated 13.3.2019 (Annexure-A/7) rejecting the representation of the applicant. This OA has been filed impugning the said order.

3. The grounds urged by the applicant included the ground that the impugned transfer of the applicant has not been recommended by the Committee constituted as per the direction of Hon'ble Apex Court and it was ordered in the midst of the academic season. It is also contended that since the respondents have suggested in their order to the applicant to avail leave in case of family difficulties showed that the contention of the respondents regarding the need for additional manpower at Jammu is not correct and the transfer order is issued out of malice.

4. A short reply has been filed by the respondents, averring that though the applicant had submitted three stations in order of preference for his transfer, but it was not possible to accommodate him in the places of his choice 'to meet out urgent functional requirement of the Chemical discipline needs at Chemical Lab at NWHR, Jammu, so that the Government work does not suffer.' The services of the applicant, who is a senior scientist, are required in the laboratory at Jammu. Reference has been made to the judgment of Hon'ble Apex Court in the case of Union of India vs. Muralidhara Menon (2009) 9 SCC 304 to aver that transfer is an incident of service and an employee has no right to be posted at a particular place unless there exists any statutory provision for the same. It is also stated that the action of the respondents is as per the para 16 of the Rotational Transfer Policy (in short RTP) and it is in the interest of the organization. Regarding the Committee, it is averred in the Short Reply that the Respondent No. 2, being the Chairman of the Placement Committee as per the Rotational Transfer Policy for Group a and B officers, has considered and disposed of the applicant's representation, for which it will not be appropriate to refer the matter to the Committee.

5. The respondents, in their short reply have referred to the judgments in the following cases to oppose the OA :

- (i) UOI vs. Muralidhara Menon (2009) 9 SCC 304
- (ii) Shilpi Bose and others vs. State of Bihar, AIR 1991 SC 532
- (iii) UOI vs. Abbas, AIR 1993 SC 2444
- (iv) Somesh Tiwari vs. UOI and others, (2009) 2 SCC 592

(v) State of U.P. & others vs. Gobardhan Lal, (2004) 11 SCC 402

6. The applicant has filed Rejoinder, stating that no post of Sr. Chemist is available in Jammu laboratory as per the order at Annexure-A/3 and recently the post has been filled up by posting another person at Jammu. It is also averred that in this case there has been a violation of the RTP as his choice stations have not been considered for his transfer. It is also stated in para 3 of the Rejoinder that 'even though transfer is an incident of service, but due to malafide action of the authority the applicant has been disturb to J & K against non-available post which is illegal arbitrary...." It is also averred that para 15(b) of the RTP has not been followed by the respondents to place his transfer before the placement committee. It is also stated that transfer of the officer who was posted at Bhubaneswar in place of the applicant has been modified and hence, there will be no difficulty to adjust the applicant at Bhubaneswar. It is also stated that a post at Raipur is available against which the applicant can be posted.

7. The respondents have also filed a Counter to the Rejoinder, denying the contentions about the sanctioned strength. Reference to the circular at Annexure-R/1 of the Counter was made to point out that there is a shortfall of about 30% of the strength and within the existing strength the work will have to be managed. It is further averred in the Counter that as per para 16 of the Transfer Policy, while efforts will be made to accommodate the requests of the staffs, but the final decision will rest on the cadre controlling authority.

8. Heard learned counsel for the applicant who reiterated main averments of the applicant in his pleadings regarding his transfer not being placed before the Committee as per para 15 of the Transfer Policy of the CGWB dated 2.1.2018 (Annexure-A/1) and the options given by the applicant as per para 13 of the Policy. Besides, it was also submitted that the impugned transfer order was not issued at the end of the academic session and that no post of Sr. Scientist is available at Jammu to accommodate the applicant as stated in para 2 of the Rejoinder, since the post against which the applicant was posted there had been already filled up. It is also stated that two of these points were not considered by the respondents while passing the order dated 13.3.2019 (A/7).

9. Learned counsel for the respondents was heard. He submitted that the applicant is continuing at Bhubaneswar in compliance of the interim order dated 28.3.2019 of the Tribunal. He submitted that although the Committee for transfer did not consider the case, but the respondent no. 2 in his capacity as the Chairman of the Committee has approved the transfer in question and that it will not be appropriate to refer the matter to the Committee again. He

justified non-acceptance of the applicant's choice of three places given in his option, due to functional requirement for Chemical discipline personnel at Jammu as stated in para 3 of the Short reply.

10. Before proceeding further in the matter, we will consider the judgments cited by the respondents in their pleadings on record. In the case of SL Abbas (supra), Hon'ble Apex Court while considering the situations in which the Tribunal can interfere in a transfer order has held as under:-

“The judgment also does not support the Respondents' contention that if such an order is questioned in a Court or the Tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the Court or the Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterised as malafide for that reason. To reiterate, the order of transfer can be questioned in a court or Tribunal only where it is passed malafide or where it is made in violation of the statutory provisions.”

In that case, the concerned employee had challenged the transfer on the ground of place of posting of his wife and children education etc.

11. In the case of Gobardhan Lal (supra), it was alleged by the employee concerned that his transfer was on political pressure and influence. Hon'ble Allahabad High Court had disposed of the writ petition with some general directions relating to transfer, which was appealed by State of U.P. It was held by Hon'ble Apex Court as under:-

“Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

12. Similarly in the case of Shilpi Bose (supra), the transfer orders were challenged before Hon'ble High Court on the ground of the place of posting of the spouse, which was allowed by Hon'ble High Court. In appeal against that order setting aside the transfer order, Hon'ble Apex Court held as under:-

“4. In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there

will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer Orders.”

In other two judgments cited by the respondents, the disputes related not to the transfer itself, but to the matters consequent to transfer, unlike the present OA. Hence, those two judgments are factually distinguishable.

13. From above judgments, it is clear from the principles laid down by Hon’ble Apex Court is that a transfer order cannot be interfered by the Tribunal unless it is proved to be malafide, or in violation to any statutory rules, or it was issued by an incompetent authority. Deviation or non-adherence to the administrative guidelines on transfer like Transfer Policy will not be a valid ground for the Tribunal to interfere with the transfer order.

14. In view of the settled law in the matter, the applicant is required to establish that the impugned transfer order is malafide or it violates any statutory rules or Act. Violation of the Rotational Transfer Policy or any executive instructions will not be a valid ground for the Tribunal to interfere in the impugned transfer order. The applicant emphasizes the ground that the impugned transfer was not placed before the Rotational Transfer Committee (in short RTC) as required under para 15 of the Policy at Annexure-A/1. The respondents have explained that the respondent no. 2 as Chairman of the Committee has approved the transfer, which has been justified on the ground of organizational requirement and public interest.

15. Assuming that the contentions of the applicant regarding non-consideration of his transfer by the RTC is correct, but it has not been established by the applicant that it amounted to a violation of any rule or statute. From the pleadings on record, although it is averred in para 3 of the Rejoinder that the action of the authorities was malafide, but there is nothing on record to substantiate the said contention. Non-placement of applicant’s transfer and not transferring him to a place of his choice cannot be construed as malafide in view of the reasons furnished by the respondents in justification of the applicant’s transfer. Hence, applying the judgments discussed earlier in this order to the present OA, we are of the considered view that no ground has been made out by the applicant to call for any interference of the Tribunal in the matter.

16. As a result, the OA is liable to be dismissed and hence, it is dismissed. The interim order dated 28.3.2019 stands vacated. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

bks